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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JUAN AYALA, Defendant and Appellant.	B213329 (Los Angeles County Super. Ct. No. TA099177)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jerry E. Johnson, Judge. Affirmed.

Arielle Bases, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Juan Ayala appeals from the judgment entered following his conviction by a jury of second degree robbery.[1] (Pen. Code, § 211.)[2] He was also found to have been armed and to have used a firearm during the commission of the offense. (§§ 12022, subd. (a)(1), 12022.53, subd. (b).) He contends the court erred when it failed to suppress his statement to police and restricted inquiry into the circumstances surrounding the custodial interview. We conclude otherwise and affirm the judgment.

STATEMENT OF FACTS

At about 6:20 a.m. on August 15, 2008, Juan Gomez was waiting at a bus stop on the corner of Rosecrans and Long Beach Boulevard in the City of Compton. A red car, driven by Rodriguez and carrying two other occupants, approached. Defendant, who was the right front passenger, asked Gomez for the time. Gomez said he did not have a watch and turned away from the car. Shortly thereafter, Gomez realized defendant was standing next to him. Defendant asked Gomez for the iPod he had in his pocket. When Gomez said he was not going to give it to him, defendant pulled a black revolver from under a blue cloth he was holding and again asked for the iPod. Gomez said no. Defendant pointed the gun at Gomez's face and told him to throw the iPod on the ground. Gomez complied. Defendant picked up the iPod and demanded Gomez's earphones. Gomez asked why, defendant continued to point the gun at him, and Gomez dropped the earphones to the ground. After retrieving the earphones, defendant entered the red car, and Rodriguez drove away.

Gomez said that a man who was also waiting for the bus called the police, who responded three to four minutes later. Sheriff's deputies drove him to a location two blocks away from the scene of the robbery to view suspects. Once there, Gomez

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[1] Defendant was tried jointly with Jennifer Rodriguez, who was convicted of the same charge.

[2] All further statutory references are to the Penal Code.

identified defendant as the person who had taken his iPod and Rodriguez as the driver of the car.

Carlos Benavidez was waiting at the same bus stop as Gomez. Benavidez noticed a man approach Gomez. Benavidez heard the man telling Gomez to "just give it to me." Benavidez did not hear Gomez respond, but the man said, "Give it to me or I'm going to shoot you. Do you want me to shoot you?" When Benavidez heard that, he walked away from the bus stop, pulled out his cell phone, and called 911. He told the operator that someone was getting robbed and the suspect might have a weapon. Although Benavidez saw the man moving his hands when he threatened to shoot Gomez, he did not see a gun. Nor did he see Gomez give anything to the man who approached. Benavidez said the man got into a burgundy station wagon containing two women and the vehicle left the area traveling on Rosecrans.

The police arrived and took Benavidez to a location to see if he could identify suspects who had been detained. He identified the male as the person who had approached Gomez at the bus stop and the burgundy station wagon that the male got into after the robbery. Benavidez did not recognize defendant at trial.

At approximately 6:20 a.m., Los Angeles County Sheriff's Deputy Drew Strong and his partner were on patrol when they received a radio call regarding a robbery that had just occurred at Rosecrans and Long Beach Boulevard. The call identified the suspect vehicle as a burgundy station wagon carrying one male and two female Hispanics. The deputies were approximately three blocks away from the location where the robbery took place. They saw a vehicle that matched the description given over the radio and began to follow it. The suspect vehicle increased its speed. As the deputies were in pursuit, Strong saw an "object fly out of the passenger side of the vehicle" as it made a turn. The deputies activated their lights and the burgundy wagon continued about another 200 yards before pulling to the curb.

Deputy Strong advised other deputies that he had seen something thrown from the wagon at the corner. Deputy Javier Flores went to the area and found a loaded black revolver in the street. Deputy Strong searched the station wagon and located a blue cloth

on the floorboard, which Gomez identified as the cloth defendant used to cover the revolver before he pulled it out and pointed it at Gomez's face. Gomez's iPod was not found.

On August 15, Detective Nader Chahine interviewed defendant. Reading from a written form, he advised defendant of his *Miranda* rights.[3] Defendant said he understood his rights and wanted to speak with the detective. He affirmed those statements by placing checkmarks in the appropriate boxes on the form.

The detective testified that defendant told him he pointed a gun at the victim and took his iPod. Defendant then put his statement in writing on the same form that was used to reflect his waiver of the *Miranda* rights. In the written statement, defendant admitted that when the victim initially refused to hand over his iPod, defendant "lift[ed] up [his] shirt and he [saw] that I had a gun so he panic[ked]." Defendant wrote that he told Gomez to place his iPod on the ground, he complied, and defendant picked it up.

The form containing defendant's waiver of his *Miranda* rights and his statement was presented to the jury.

Defendant presented no evidence.

DISCUSSION

I. The Admission of Defendant's Statement

Defendant contends the trial court erred when it denied the motion to suppress his statement to Detective Chahine. Defendant claims the totality of the circumstances demonstrate that he did not voluntarily waive his right to remain silent. We disagree.

"'In order to introduce a defendant's statement into evidence, the People must prove by a preponderance of the evidence that the statement was voluntary.'" (*People v. Maury* (2003) 30 Cal.4th 342, 404, quoting *People v. Vasila* (1995) 38 Cal.App.4th 865, 873.) "Whether the confession was voluntary depends upon the totality of the

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436.

circumstances. [Citations.]" (*People v. Carrington* (2009) 47 Cal.4th 145, 169.) The same test is used when considering a case involving a minor. (*Fare v. Michael C.* (1979) 442 U.S. 707, 725.) The trial court's finding with respect to voluntariness is subject to independent review. (*People v. Carrington*, *supra*, 47 Cal.4th at p. 169.)

Defendant abandons the argument he presented below that because he was under 18, the detective was required to advise him he had a right to have a parent present during questioning. He now points to his age at the time of the interview (17 and a half), his lack of prior contacts with the police, and his willingness to comply with the detective's requests and asserts they "indicate a disturbing level of ignorance as to what rights he was waiving and the consequences of his statements." We are not persuaded.

All of the evidence presented to the trial court established that defendant's waiver was voluntary and he was aware of the consequences of discussing the case with the detective. It was undisputed that defendant stated he understood his rights and checked the boxes on the form which reflected that understanding. Then he was asked if he wanted to make a statement. He said yes, checked the box on the form that indicated he wanted to talk about the incident, and set forth his version of the events in his own handwriting. In the face of an utter lack of evidence to the contrary, the totality of the circumstances surrounding defendant's decision to waive his *Miranda* rights inescapably leads to but one conclusion. Defendant understood he had a right to remain silent, knew any statement he made could be used against him in court, and freely chose to speak to police.

The trial court properly denied defendant's motion to suppress his statement.

II. The Alleged Restriction of Examination Regarding Defendant's Statement

Defendant contends the court restricted his examination of Detective Chahine with respect to the interview. He argues he should have been allowed to present certain evidence, which he asserts would have caused the jury to doubt the veracity of his admission. Defendant claims he was deprived of his constitutional right to present a defense. The Attorney General urges that defendant forfeited his claim by failing to

object below and, in any event, any alleged error was harmless. We agree with the Attorney General.

In the face of the Attorney General's claim of forfeiture, defendant maintains that "[s]everal times throughout the trial, defense counsel specifically objected to the court's limitations as to questions regarding the circumstances of the interrogation that may have gone to the veracity of the statements." His position is belied by the record.

Prior to jury selection, the prosecutor asked the court to not allow defendant to mention his age during the defense case, arguing it was irrelevant. At that point, defense counsel stated he had no intention of introducing such evidence, although he had not yet determined if defendant's age was relevant to the issue of voluntariness.

Before Detective Chahine testified, the parties went on the record out of the presence of the jury. Defense counsel stated he did not think he would be asking for a suppression hearing.[4] He said, "However, once I cross-examine the officer, I am going to want to know how long the interview took place, where the interview was, whether it was audiotaped or videotaped. I do also want to know whether the officer advised my client of the right to have a parent present, and that does in a way imply my client's age. I just wanted to run that by the court and counsel because I know counsel had an objection earlier. But, again, I think there is a legitimate reason for me to ask that question. I'm not just throwing it out there for sympathy, but I think it goes to the veracity of the statement that he allegedly wrote on that date."

After the prosecutor suggested that counsel could ask the detective certain questions out of the presence of the jury, defense counsel responded, "But I think the issue of age is something that the jury can possibly find relevant and consider when it comes down to the veracity of the statement as a trier of fact."

Over the prosecutor's objection, the court ruled that defendant's age was relevant and he could present that evidence to the jury. His counsel stated, "That's fine. That's sufficient. I'm okay with that."

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[4] Later, counsel changed his mind and a suppression hearing was conducted.

Later, when the prosecutor presented defendant's written statement, she again asked the court to exclude evidence of defendant's age. Defense counsel argued, "[I]f the People seek to introduce that statement, I certainly have a right to argue my client's age in light of his credibility." The prosecutor asked that defendant's age be redacted from the page containing his statement. The following colloquy between the court and defense counsel ensued:

"The Court: I think he can refer to the date of birth in identifying the defendant, indicating his age, but any further than that I think would be a 352 issue.

"[Counsel]: That's fair, I agree. I'm not going to go into it too much.

"The Court: 'Too much,' what's that mean? You just opened the door. I think you should be restricted to just that one reference.

"[Counsel]: After the detective testifies I think Your Honor would see the relevance even more.

"The Court: It may very well happen, but that's subject to another request.

"[Counsel]: Correct."

It is clear that defense counsel wanted the jury to know how old defendant was at the time of the police interview. He intended to (and did) argue to the jury that it should consider defendant's age and inexperience when determining whether he admitted to using a gun during the robbery. He did not object when the court stated that it was allowing only evidence of defendant's age to be heard by the jury. Although counsel mentioned he wanted to know whether the detective advised defendant that he had a right to have a parent present during questioning, he did not ask the court to allow him to question the detective on that subject. Counsel did not express a desire to ask questions related to defendant's prior contacts with the police. Arguably, defendant waived the objection by not requesting to present the evidence he claims was wrongfully excluded. In any event, his failure to object on the same ground asserted on appeal results in a forfeiture of the issue. (*People v. Dykes* (2009) 46 Cal.4th 731, 756.)

Even if the claim had been preserved for appeal, any perceived error was harmless. Contrary to defendant's claim, we do not determine whether the exclusion of

the evidence at issue was prejudicial by applying the test in *Chapman v. California* (1967) 386 U.S. 18, 26 [error is not prejudicial if it was harmless beyond a reasonable doubt]. Defendant was not deprived of the opportunity to present a defense. At most, he was precluded from introducing some of the evidence relevant to his defense. As such, the proper standard of review is that stated in *People v. Watson* (1956) 46 Cal.2d 818, 836 [error is prejudicial if it is reasonably probable that defendant would have received a more favorable result absent the error]. (*People v. Boyette* (2002) 29 Cal.4th 381, 428.)

Defendant suggests the following evidence was relevant to the jury's determination whether his statement to Detective Chahine was credible: (1) the detective did not ask him if he wanted a parent present during the interview; (2) his parents were not present during the interview; and (3) he had limited experience with the criminal justice system. He urges that evidence "shed doubt on the veracity of the statements obtained." We fail to see the connection.

Without defendant's testimony regarding his thought process at the time of the interview, we can only speculate as to whether he had any reason to admit to acts he did not commit. Defendant fails to offer any explanation for his view that he would have been motivated to tell the detective the truth if his parents had been present. Nor does he attempt to support his contention that his inexperience with police made it likely that he falsely admitted to using the gun because he believed that is what the detective wanted to hear. Standing alone, his theory that a suspect would confess to a crime he or she did not commit is counterintuitive.

We find it unlikely that the excluded evidence would have caused the jury to conclude that defendant's statement, written in his own hand, was false when he admitted to displaying the gun and causing the victim to relinquish his property. Even if the jury had thoroughly discounted defendant's admission, it is not reasonably probable it would have found that defendant did not use a gun during the robbery. Gomez testified unequivocally that defendant pointed a gun at him after he initially refused to turn over his iPod. Benavidez heard defendant say to Gomez, "Give it to me or I'm going to shoot you," making it likely defendant showed Gomez he had the means to make good on his

threat. Defendant attempts to create a conflict in the evidence by citing Benavidez's testimony that he did not see a gun. However, as the prosecutor pointed out, Benavidez walked away from the bus stop to call the police when he heard defendant say he was going to shoot Gomez. This explains why Benavidez did not see a gun or Gomez give his iPod and headphones to defendant. On this record, the exclusion of the evidence in question, which had limited probative value at best, did not constitute reversible error.

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.